RACHELLE L. CHEROL* AND SUSANA ZALDUENDO†

Legal Framework for Foreign Investment in the Caribbean and Central America

I. Introduction

Central America and, to a lesser extent, the Caribbean have recently been attracting worldwide attention. Developed countries, Latin American governments, international forums and special commissions have all been drawn to the plight of the region as a result of political and military events. This unfortunate notoriety has alerted all to the fact that an urgent need exists to achieve greater economic and social development among the countries of the region. Of the many proposals that have been suggested to encourage such development, reference is often made to increasing the flow of capital and foreign direct investment aimed at the modernization of the productive sector and industrial development. Such an endeavor obviously calls for an awareness on the part of all concerned of the "investment climate" of the countries involved. A description and analysis of the countries' investment climate, in turn, requires that a broad range of factors be taken into consideration. Their infrastructure, market size, political stability, labor skills, and legal framework are important elements of a comprehensive analysis of the conditions for doing business in the countries, as well as for the determination of the location and composition of business activities.

This article examines one aspect of the countries' investment climate—their legal framework. A description and comparison is made of the foreign

*Ms. Cherol is a 1979 graduate of the Washington College of Law, the American University, and a member of the District of Columbia Bar. She is a consultant to the Latin American Integration Institute, Buenos Aires, Argentina.

†Mrs. Zalduendo is an Argentine lawyer and a consultant with the Latin American Integration Institute, Buenos Aires, Argentina.

investment regulatory schemes of ten Caribbean and Central American countries, namely: Barbados, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, and Trinidad and Tobago. Specifically, the following discussion analyzes market entry procedures, tax treatment, statutory incentives, and legal rights and protection of foreign direct investments operating in the countries. Under the various legal provisions,[1] it is obvious that foreign capital participation is allowed and, to a certain extent, even actively sought. However, the potential foreign investor must be aware that in seeking to avoid the real or perceived foreign domination of their economies, the Caribbean and Central American countries limit foreign equity ownership to particular sectors or to those activities which are net earners or savers of foreign exchange.

II. Authorization and Registration Procedures

The existence or nonexistence of specific procedures which must be followed so that foreign capital can be brought into a country allows for the categorization of the Caribbean and Central American countries into several distinct groups. The first group includes those countries that require the prior authorization and registration of the foreign capital by a designated national agency. The Dominican Republic, El Salvador, Jamaica, and Nicaragua are classified within this group.[2] The second group, made up of Barbados and Trinidad and Tobago, mandates the prior authorization of foreign capital but requires its registration only if the investor wishes to facilitate the repatriation of capital and the remittance of profits.[3] A third group, which includes Guatemala and Costa Rica, only requires the registration of foreign capital.[4] Finally, in Honduras and Panama, neither prior

1. While most of the countries regulate foreign direct investments by means of their general business laws and regulations, both the Dominican Republic and Nicaragua have a specific law designed solely to address this issue. Foreign investment in the Dominican Republic is regulated by Foreign Investment Law 861 of 1978, *as amended by* Law 138 of 1983. In Nicaragua, Decree 10 of 1955 regulates all foreign investment established prior to 1979. The Nicaraguan government is currently drafting a new foreign investment law that will present the country's general policy toward all foreign investment, leaving for case-by-case determinations specific issues relating to the rights and obligations of foreign investors.

2. The Dominican Republic, Law 861 of 1978, art. 5; El Salvador, Decree 146 of 1961, art. 6 and Decree 147 of 1961, arts. 37 and 39; Jamaica, Business Profile: Jamaica; and Nicaragua, Decree 10 of 1955, arts. 3 and 9.

3. Barbados, Exchange Control Act of 1971, *as amended*; Trinidad and Tobago, Exchange Control Act of 1970. In Trinidad and Tobago, foreign investors are also required to obtain a license to hold an interest in real estate or hold shares in local companies. The license is granted by the minister of finance with the prior approval of the Aliens Landholding Advisory Committee.

4. Guatemala, Exchange Control Regulations of 1980, arts. 32 and 33; Costa Rica, Selective Registration of Capital Regulations of 1983, arts. 3, 5 and 10–12. In practice, the registration of

Table 1
Foreign Investment Authorization and Registration Agencies

Country	*No. of Agencies*	*Name of Agency*	*Function*
Barbados	1	Central Bank	Authorization/Registration
Costa Rica	1	Central Bank	Registration
Dominican Republic	2	Directorate of Foreign Investment	Authorization
		Central Bank	Registration
El Salvador	2	Ministry of Foreign Trade	Authorization/Registration
		Central Bank	Registration
Guatemala	1	Bank of Guatemala (Central Bank)	Registration
Honduras	—	—	—
Jamaica	1	Bank of Jamaica (Central Bank)	Authorization/Registration
Nicaragua	1	Central Bank	Authorization/Registration
Panama	—	—	—
Trinidad and Tobago	1	Central Bank	Authorization/Registration

authorization nor registration of foreign capital is a prerequisite for its entry into the national economy.

As illustrated in Table 1, in those countries (except Honduras and Panama) where authorization and/or registration is required, the national agency designated to perform such functions is usually the central bank of the particular country. The Dominican Republic presents an exception as it has created a distinct entity—the Directorate of Foreign Investment—to authorize all foreign investments, although the central bank continues to be responsible for the registration of such investments. El Salvador also presents an exception because the Ministry of Foreign Trade authorizes and registers all foreign investment although, once again, the central bank continues to register foreign investments.

investments in Costa Rica is optional since foreign capital can enter via the free exchange market without any restrictions. However, since August 1982, when the exchange operations of finance companies and exchange houses were suspended by law, investors have preferred to register with the central bank since this allows them to make transfers at the banking or free market exchange rate as well as assures them preference in the acquisition of foreign exchange for remittances abroad.

The type of information which must be provided by the foreign investor for the authorization and/or registration of foreign capital generally includes data about the investor (including incorporation papers and the balance sheet and profit and loss statement if the investor is a company) as well as information pertaining to the local enterprise receiving the foreign investment and the project or investment itself. Some countries also require information pertaining to the goods (rather than capital) to be contributed (the Dominican Republic and Trinidad and Tobago), any capital expenditures expected to be incurred in foreign currency as well as the possibility of substituting such expenditures with local purchases (Trinidad and Tobago) and the amount of payments made in the recent past to foreign shareholders of the investing company (Guatemala). In the Dominican Republic there are legal provisions regarding the valuation of used machinery or equipment, and to the extent the Directorate determines that the value of the goods is less than originally stated, the central bank will register the goods at their lesser value.[5]

In actually making the determination of whether to authorize the foreign investment, the relevant agency is directed, either by specific legislation or by administrative practice, to consider the investment's overall viability and social convenience. Such factors as the investment's contribution to foreign exchange earnings, employment, productive capacity and transfer of technology are taken into consideration. Jamaica and the Dominican Republic are particularly interested in those foreign investments which are associated with the exportation of goods and services and in which the foreign investor controls or has secure access to overseas markets.

In addition to the registration of foreign funds with the central bank, general business law in the countries requires that all foreign companies file basic company data with the respective registrar of companies. Such information includes a certified copy of the company's articles of incorporation, a list of the directors, including their addresses and nationalities, the name and address of the company's registered agent, and a copy of the company's annual balance sheet.

III. Exchange Regimes and the Transfer of Funds Abroad

With the exception of Panama, all of the countries studied exercise some form of exchange control which is administered by the central bank of the respective country, with some authority being delegated to authorized dealers. Among the ten countries, noticeable differences can be found with regard to the degree of control exercised over foreign exchange flows into and out of the countries. Nicaragua, for example, has a very strict exchange

5. Law 861 of 1978, art. 14.

regime in that an exchange law has been enacted which imposes severe criminal sanctions for violations of the exchange control law.[6] Differences also exist with regard to the number of exchange markets in a particular country. Countries such as Barbados, Guatemala, Honduras, Jamaica, and Trinidad and Tobago have a single exchange rate system while others, such as the Dominican Republic, El Salvador, and Nicaragua,[7] have a dual exchange rate system consisting of an official and a parallel market. Costa Rica has yet another—a multiple exchange rate system—which includes an official market rate, a banking market rate, and a free market rate.[8]

In countries with a dual or multiple exchange rate system, investors must be aware that a specific exchange market is often required to be used for the entry of capital as well as its transfer abroad. In the Dominican Republic, Nicaragua, and El Salvador, therefore, foreign capital must enter via the official market and, with the exception of El Salvador, be remitted abroad through the same market. In El Salvador, according to regulations established in 1983,[9] the acquisition of foreign exchange to repatriate capital—except loans—and to remit profits, royalties and similar expenses—except interest—must be made through the parallel market, which implies that a foreign investor must have available a greater quantity of local currency.[10] Costa Rica permits investors who have registered their capital with the central bank to choose between the banking or free exchange rate, but once the foreign capital enters via one of these markets, remittances abroad must be made through the same market.[11]

In almost all of the countries considered, there are no legal limitations on the amount of profits that can be remitted.[12] Nevertheless, some restrictions

6. Decree 835 of 1981 provides for a cumulative prison sentence of up to thirty years for specified exchange offenses.

7. The application of a tax on nonessential imports and the "mixing" of exchange rates of the official and parallel market in exports leads to a multiplicity of exchange rates in Nicaragua.

8. The official market rate is applicable to imports of medicine and medical equipment by the Ministry of Health, the Costa Rican Social Security Fund, and the Technical Council for Medical and Social Assistance, as well as expenses (approved by the Central Bank of Costa Rica) of students for higher education abroad. The banking market rate is applicable to all foreign exchange payments of external public debt service, expenditures for foreign service and diplomatic missions abroad, imports of certain essential foodstuffs, basic raw materials, and machinery and spare parts that are included in a specified basic basket of commodities. The free market rate is applicable to all other transactions, including imports that are not part of the basic basket of commodities, travel and tourism, family remittances, allocations received from diplomatic representatives and international organizations, insurance premiums, repatriated Costa Rican capital, and other private capital not registered with the Central Bank.

9. Monetary Board Resolutions Nos. 1 and 2 of February and March 1983 and No. 8 of June 1983.

10. In El Salvador, the official rate of exchange is US$1.00 = 2.50 colones while the rate in the parallel market is US$1.00 = 4.00 colones. Similar measures requiring that foreign exchange needed for the repatriation of capital and the remittance of profits be acquired via the parallel market are being considered in Nicaragua.

11. Selective registration of Capital Regulations of 1983, arts. 10, 11, and 12.

12. As in other Latin American countries, particularly those which form the Andean Group,

are to be found in the Dominican Republic and El Salvador. In the Dominican Republic, annual profits cannot be remitted in excess of 25 percent of the registered capital—an increase of 7 percent from the 18 percent limitation imposed prior to 1983.[13] All remittances must be made within two years from obtaining the profits and those in excess of 25 percent of the registered capital cannot be added to the profits of other fiscal periods in order to complete this percentage. Profits in excess of the 25 percent limit can be: (1) reinvested in export, tourism, or import substitution enterprises if such enterprises have at least 30 percent national value-added; (2) reinvested as securities or bonds which are designed to finance activities in the above-mentioned sectors; or (3) lent to national economic and tourist development funds. El Salvador imposes a somewhat less restrictive regime in that an annual profit remittance limit of 10 percent of the registered capital is applicable only to some primary sector activities, trade and other services. This limit can be increased with the approval of the Minister of Foreign Trade. Prior to 1970, a 10 percent limit on the remittance of profits was applicable to all sectors.[14]

With regard to the repatriation of capital, some countries do not apply any restrictions on the amount of capital which can be sent abroad. Such countries include Guatemala, El Salvador, Honduras, Nicaragua, and Panama. Other countries, such as Barbados, Trinidad and Tobago, and Jamaica, impose restrictions only on the repatriation of capital gains: in Barbados, the central bank reserves the right to transfer capital gains over a reasonable period of time;[15] in Trinidad and Tobago, capital gains are repatriated over a maximum of five years; and in Jamaica, capital gains originating with real estate transactions are repatriated over an appropriate period of time. In Costa Rica, on the other hand, registered capital must remain in the country for a minimum of four years before being repatriated, although with sufficient justification it can be repatriated earlier.[16] Finally, in the Dominican Republic, registered foreign capital, less any net losses of the enterprise, may be repatriated when shares of the enterprise are sold or when the

---

the percentage limitation on profit remittances is no longer as controversial an issue among the countries as it was during the early 1970s. The proposed foreign investment law of Nicaragua, which is discussed in note 1, also does not contemplate imposing restrictions in this area.

13. Article 20 of Law 861 of 1978 *as amended by* Law 138 of 1983. The increase from 18 to 25 percent was deemed necessary by the National Congress if investors were to take the risk of investing abroad rather than keep their deposits at home and enjoy high rates of interest.

14. Article 40 of Decree 146 of 1961, *as amended by* Decree 37 of 1970. The newer statute provides that no limitation on annual profit remittances will be applied to nonrenewable extractive industries, industrial enterprises, and tourism.

15. Specifically, the formula for the repatriation of capital gains is the original investment plus 8 percent return for the last five years, 5 percent return for the preceding five years and 4 percent return for the preceding ten years. Any amount repatriated in excess of these restrictions is limited to US $12,000 a year.

16. Selective Registration of Capital Regulations of 1983, art. 14.

enterprise is liquidated. In the case of the liquidation of the enterprise, the Directorate of Foreign Investment will verify that the sale value of the liquidated assets conforms to market value. With regard to capital gains, a remittable capital gain of up to 2 percent per annum (cumulative up to a maximum of 20 percent) on the registered foreign investment is authorized.[17] However, the Directorate may deny authorization to transfer the profits realized on the sale of real estate if the Directorate considers the sale a speculative transaction.

Requests for foreign exchange for transfer abroad are addressed to the central banks of the countries. Such requests are subsequent to the approval of the Ministry of Foreign Trade in El Salvador and the Directorate of Foreign Investment in the Dominican Republic. In some countries, such as Barbados, Guatemala, Honduras, and El Salvador, foreign exchange requests are made on forms prepared by the central banks, while in other countries informal written applications are presented. Proof of the payment of taxes and the distribution of profits is required in all cases.

It is important to point out that with or without the formal imposition of capital restrictions, in practice, there are often delays in the provision of foreign exchange for the transfer of both capital and profits abroad. The Dominican Republic, Guatemala, Honduras, Jamaica, and Nicaragua are particularly subject to such delays as a result of foreign exchange shortages, certain foreign exchange payment priorities, or predetermined schedules for the remittance of funds abroad.

IV. Areas of Investment and Sectoral Limitations

In general, foreign investment policies differentiate between types of business activities in order to define regulations applicable to them. Some activities may be reserved for the government, others are the exclusive rights of nationals, and still others are open to foreign investors. In the latter case, "open to foreign investors" not only implies 100 percent foreign participation but, more often than not, some percentage thereof in combination with national participation.

In all of the countries studied, except Trinidad and Toabgo, this "joint venture" status is usually dependent upon the area of investment. Thus, as will be discussed in detail below, one country may require joint ventures to be established in such areas as the exploitation of natural resources, manufacturing, banking, tourism, or public services, while another may choose to either limit such activities to national investors, or open them to 100 percent foreign participation. Trinidad and Tobago is the only country which requires all foreign companies that are operating in the country, notwithstand-

17. Law 861 of 1978, arts. 21 and 22.

ing the area of investment, to have some local participation in the capital or management of the company.[18] While the actual level of foreign equity participation that is permissible in any venture is determined by the central bank, in general, this is usually never in excess of 49 percent for major projects in which the government is itself the majority partner and 40 percent for smaller private projects where the government expects that local investors will constitute 60 percent of the ownership. Trinidad and Tobago is moving to bring existing foreign investments in line with these percentages to the extent that already established foreign owned companies are encouraged to transfer majority ownership to nationals. To date, this strategy of "localization" (divestment) has thus far been arrived at through renegotiation, and expropriation has not become an issue.

A. Exploitation of Natural Resources

In most of the countries, foreign investors are not subject to restrictive conditions regarding the acquisition and exploitation of *rural land* for agricultural purposes. However, some restrictions do exist in Guatemala, El Salvador, Nicaragua, and the Dominican Republic. In Guatemala, in accordance with the agrarian law, agricultural activities on rural public lands are reserved for citizens of Guatemala and companies with national participation.[19] In El Salvador, the constitution provides that foreign individuals or companies with foreign participation can only acquire land for agricultural purposes if the foreign investor's country of origin grants a similar right to nationals of El Salvador.[20] Further, in El Salvador, the external marketing of coffee and sugar is controlled by the state. A similar restriction is found in Nicaragua where the marketing of meat, cotton, and bananas, as well as coffee and sugar, is in the hands of the government. In the Dominican Republic, agriculture and poultry and cattle exploitation are reserved for national and mixed companies.[21] It is necessary to point out that with respect to agrarian reform in the countries, El Salvador, Honduras, and Nicaragua all have provisions in their respective agrarian reform laws[22] which provide that only individuals or farmers' associations or coop-

18. Despite the government's stated position of requiring local participation in foreign enterprises, exceptions have been made. Where a project is expected to confer significant benefits to the national economy, foreign equity participation to the extent of 100 percent is permitted. This decision generally depends on the nature of the project, the level of technology and international marketing expertise it will introduce, its employment generation capacity and the utilization of local resources.

19. Decree 1551 of 1962 as amended by Decree 27 of 1980, arts. 104 and 138.

20. Political Constitution of 1984, art. 108.

21. A national company is one with more than 70 percent of its capital belonging to national investors while a mixed company is one whose capital is 50 to 70 percent owned by national investors. In both cases, the ratio must be reflected in the technical, financial, administrative and sales management of the company. Law 861 of 1978, art. 1(g)(h).

22. El Salvador, Decree 153 of 1980; Honduras, Decree 170 of 1974; Nicaragua, Decree 782

eratives, and not corporations, can benefit from the allocation of land affected by the reform. In the case of individuals, in particular, Honduran law expressly refers to nationals by birth while Nicaraguan law refers to foreign persons who have received prior authorization from the Ministry of Agricultural Development and Agrarian Reform.[23]

Foreign investment in *forestry* is subject to certain conditions in Honduras, Nicaragua, and the Dominican Republic. In the Dominican Republic, forest exploitation is reserved exclusively for national companies. In Nicaragua, the state controlled Forest Corporation (CORFOP) executes all forestry activities, although one of its functions includes the establishment of mixed companies.[24] In Honduras, forest land may be held privately, although all forestry operations were nationalized in 1974. A government agency—the Honduran Forest Development Corporation (COHDEFOR)—supervises all forestry activities, reserving for itself or private wholly owned Honduran companies the felling, sawmilling, and extraction and distillation of resins, although foreign participation not exceeding 49 percent of the capital of a company is also permitted when access to foreign technology or external markets is sought. The state must also own at least 51 percent of the capital of companies operating in basic forestry industries and is solely responsible for the exporting and domestic marketing of forestry products.[25]

With regard to the *fishing sector* in the countries of the region, a preference exists for companies with national capital participation. In El Salvador[26] and Honduras[27] fishing companies are required to have more than 50 percent local capital. In the Dominican Republic this activity is reserved for national or mixed companies.[28] In Panama this sector is reserved for nationals only.[29] Finally, in Nicaragua, this sector is regulated by a state corporation, the Nicaraguan Fishing Institute (INPESCA).[30]

---

of 1981. These laws are somewhat different in that private land was expropriated in El Salvador and Honduras based principally on size, while both private and public land was included in Nicaragua's agrarian reform on the basis of size and idleness. In addition, in Nicaragua, the allocation of land does not grant an ownership interest in it but rather the right to use the land, and not the right to transfer it except by inheritance or by a contribution to a cooperative society.

23. El Salvador, Decree 153 of 1980, arts. 18 and 21; Honduras, Decree 170 of 1974, arts. 79, 88, and 112; Nicaragua, Agrarian Reform Law Regulations, arts. 13 and 27.

24. Decree 410 of 1980, arts. 1, 3, 5, and 14.

25. Decree 103 of 1974, arts. 5–7, 29, and 40–43.

26. The restriction applies only to maritime fishing—to certain species in ocean zones. General Fishing Activities Law, Decree 799 of 1981, arts. 22, 23, 26, and 28.

27. The application of the restriction is very flexible in practice. Decree 154 of 1959, arts. 12, 15, 17, 20, 26, 29, and 40.

28. Law 861 of 1978, art. 23.

29. The restriction applies only to fishing in jurisdictional waters whose product is intended for immediate consumption. FISCAL CODE OF PANAMA, Law 8 of 1956 and amendments, art. 286.

30. INPESCA has established two companies: ENDIMAR, which serves as the domestic

In the area of *mining*, both Guatemala and Honduras prohibit the acquisition of mining rights by foreign governments and public companies and, under equal conditions, grant preference to national companies in obtaining exploration and exploitation permits and concessions.[31] The recently enacted Mining Code of Costa Rica prohibits the granting of concessions to foreign governments and public companies except when a contract approved by the Costa Rican General Assembly has been signed with the Costa Rican government. The code also establishes the state's right to participate in 33 percent of the capital in exploitation concessions.[32] Nicaragua nationalized mining companies in 1979, and all mining company shares have passed to the state. However, the Nicaraguan Mining Institute (INMINE) has the authority to establish mixed companies as long as the state has majority participation.[33] In two Caribbean countries—Jamaica and the Dominican Republic—the mining laws have recently been made more flexible. In Jamaica, while mineral exploitation, especially of bauxite, historically has been reserved for the state, the change in government in 1980 brought about a modification in policy. Currently, one of the areas open to foreign investment is the mining sector and especially the exploitation of bauxite and the manufacture of aluminum. In the Dominican Republic, while the Directorate of Foreign Investment prohibits foreign investment in the area of the exploitation of radioactive materials and minerals, the mining policy was modified in 1983 to encourage more private investment in the exploration of metal mines.[34] Fiscal reserve areas have been established in which development is by the government or by special contracts with companies with government participation. For those areas which are not included in the fiscal reserves, Mining Law 146 of 1971 permits the granting of concessions to individual private companies.

While in the *petroleum sector*, all of the countries, in the past, permitted the exploitation of petroleum by means of concessions (i.e., long-term contracts with few obligations for the concessionaire), many countries today allow private companies to operate only in accordance with petroleum and

distributor of fish products and ENMAR, which serves as the exclusive exporter of such products.

31. In Guatemala, the Mining Code and the law regarding quarrying grant perference to companies with more than 50 percent Guatemalan capital. Decree 342 of 1965, arts. 7, 11, 12, and 35 and Decree 47 of 1969, arts. 1, 3, and 15. In Honduras, the preference in favor of Hondurans refers to natural persons involved in small mining operations. Decree 143 of 1968, arts. 19, 36, and 47.

32. Law 6797 of 1982, arts. 3, 7, 9–11, and 50.

33. Decree 137 of 1979 and Decree 519 of 1980.

34. In 1974 the government decided to reserve the exploration of metal mines (except for those already known and being explored at that date) for the Dominican government or for individual companies which were granted service contracts for government account. Since this action eliminated almost all private exploration in the country, the mining policy was modified in 1983.

petroleum service contracts with government agencies or state companies that, in turn, exercise stricter control over private firm obligations. Guatemala, El Salvador, Nicaragua, and the Dominican Republic all require private companies to operate by means of contracts rather than concessions. Further, in Guatemala, preference is given to those contracts involving national participation,[35] and the transportation and transformation of hydrocarbons is carried out solely by the state. In Honduras, concessions are still used and these can be granted to foreign companies as long as they are not public companies, but they are obligated to offer one-third of the capital to Hondurans for a predetermined period of time.[36] Costa Rica's petroleum laws require that the transportation, distribution, and sale of petroleum products[37] be carried out by the state-controlled Costa Rican Petroleum Refinery (RECOPE).[38] In Trinidad and Tobago, the marketing of petroleum is reserved for nationals.

B. Industrial Activities

The manufacturing sector has traditionally been the area of investment most open to foreign participation. Generally, the Central American countries, as well as the Dominican Republic, express their interest in foreign investment in this sector by seeking those investments that lead to the export of goods or services and that are favorable to the country's balance of payments. Foreign investment is not permitted, however, in the small manufacturing sector of El Salvador and Honduras. In accordance with the constitutions of both countries, this activity is reserved exclusively for nationals.[39] Unlike their neighbors, many of the Caribbean countries have specifically designated priority manufacturing activities for foreign investment. Thus, Trinidad and Tobago, Jamaica, and Barbados are particularly interested in attracting foreign investment to the textile industry; Trinidad and Tobago and Barbados encourage foreign investment in electronics

35. Guatemala's hydrocarbon law gives priority to nationals participating in a project with a minimum 5 percent interest. Decree 109 of 1983, art. 59. El Salvador's law also provides that under equal conditions nationals be granted preference in the awarding of petroleum service contracts. Decree 626 of 1981, arts. 46, 48, and 49.

36. Decree 4 of 1962, art. 6 and Petroleum Law Regulations of 1963, arts. 19–23.

37. Law 6588 of 1981, art. 6. At the end of 1983, the Costa Rican National Assembly was considering a hydrocarbon law that provided for a reserve system for the state and operation through contracts.

38. In 1973, private companies holding RECOPE shares signed an agreement with RECOPE whereby ownership rights passed to the Costa Rican state. Law 5508 of 1974, arts. 1 and 3.

39. In El Salvador the prohibition on foreign participation applies to sole proprietorships with less than US$20,000 capital and to corporations with less than US$40,000 capital (the minimum capital required for all corporations is US$8,000); and in Honduras, a small manufacturing industry is one whose shares do not exceed $25,000.

equipment and assembly; and Jamaica and Barbados emphasize foreign investments in food processing and marketing. Other areas of interest in these three countries include the capital goods sector, pharmaceuticals, beverages and tobacco, metal products, petroleum products, and furniture.

C. Financial Sector

Restrictions regarding the financial sector are to be found in four of the countries studied. Since 1948, Costa Rica has allowed only state banks to accept deposits. Therefore, private commercial banks, which may be either national or foreign owned (but not a branch of a foreign bank), must be financed through operations other than savings and checking accounts.[40] Nicaragua nationalized all financial institutions (banks, investment companies, and savings and loan institutions) in 1979, resulting in the shares of such entities being held by the Nicaraguan Finance Corporation (CORFIN).[41] Branches of foreign banks may continue to operate but they are prohibited from accepting deposits.[42] El Salvador also nationalized the banking sector (in 1980), but 29 percent of the capital can continue to be held by private national or foreign investors.[43] As in Nicaragua, branches of foreign banks operating in El Salvador may not accept deposits.[44] Finally, in the Dominican Republic, only national and mixed companies may participate in banking activities.[45] The remaining countries do not restrict the banking activities of foreign investors,[46] and in fact, both Panama and Barbados are viewed as important international banking centers, providing special tax benefits to offshore banking activities.

Insurance companies are a state monopoly in both Costa Rica and Nicaragua.[47] Guatemala, on the other hand, allows foreign-owned insurance companies incorporated in Guatemala to operate with no percentage limitations imposed on the amount of foreign capital,[48] but it does not allow

40. They can issue investment certificates, accept and guarantee bills of exchange and other credit documents, issue letters of credit, guarantee third-party debts and perform other tasks such as safekeeping of securities and collecting bills on behalf of third parties.

41. Decree 25 of 1979, arts. 1 and 4; Decree 463 of 1980, art. 3; and Decree 743 of 1981, art. 1.

42. Decree 25 of 1979, art. 1.

43. Decree 158 of 1980, arts. 1 and 2. This law has, in fact, increased the participation of foreign investors since the previous law, the Law of Credit Institutions and Auxiliary Organizations of 1970, imposed a 20 percent limit on foreign capital participation.

44. Decree 158 of 1980, art. 7.

45. Law 861 of 1978, art. 23.

46. It must be pointed out that Guatemala has not permitted the opening of branch offices of foreign banks during the last few years because of the belief that existing banks adequately meet the needs of the market.

47. In Nicaragua, the nationalization decree provides that branches of foreign companies may continue to administer their portfolios until the current contracts expire, but they are not permitted to sell new insurance. Decree 107 of 1979, art. 4.

48. Decree 473 of 1966.

branch offices of foreign insurance companies to be established. The Dominican Republic reserves insurance activities for national and mixed companies while Trinidad and Tobago reserves this sector for nationals only. The other countries do not impose any restrictions in this area, but in Honduras, if a company is established as a "national insurance company," at least 60 percent of its capital must be owned by Hondurans.[49]

D. Tourism

The Caribbean countries of Barbados, the Dominican Republic, Jamaica, and Trinidad and Tobago particularly recognize the important potential of a tourism industry. As a result, specific legislation has been enacted in each of these countries which provides the guidelines and incentives for investment, including foreign, in tourism developments.[50] With the exception of the reservation for nationals of small guest houses and ancillary tourist services, tourism is generally open to foreign investment. Further, foreign investors are eligible to benefit from the income tax and import duty exemptions granted to hotel owners and operators by the various tourism incentive laws. Similar treatment to that found in the Caribbean is granted to foreign investors who are interested in tourism in Central America. Honduras has a tourism incentive law which grants relief from import duties, and El Salvador, Costa Rica, and Panama all have tourist development laws that not only provide relief from import duties but income tax as well.[51]

E. Public Services

Public services, such as mail, telephone, telecommunications, water, and the distribution of electricity, are generally state controlled in all of the countries studied. El Salvador and Barbados present the only exceptions where private enterprises are allowed to engage in the distribution of electricity. Radio and television broadcasting, rather than being state controlled, is generally reserved for nationals of a country, as is the case in Panama, the Dominican Republic, and Nicaragua,[52] or at least must have a

49. Decree 28 of 1963, art. 6.

50. Barbados has enacted the Hotel Aids Act of 1967; the Dominican Republic, Tourist Incentive Law 153 of 1971; Jamaica, Hotel Incentives Act 16 of 1967, *as amended* and Resort Cottages Act 31 of 1971, *as amended*; and Trinidad and Tobago, the Hotel Accommodation Act, 1972.

51. Honduras, Decree 2 of 1972; El Salvador, Tourist Development Law (Decree 367 of 1967); Costa Rica, Law 2426 of 1959; and Panama, Decree 26 of 1967, Decree 77 of 1971, and Decree 102 of 1972.

52. The commercial exploitation of radio and television is reserved for citizens of Nicaragua or legal entities formed by nationals. If such activities are undertaken by corporations, the capital must be represented by nominative shares which are transferable only upon the prior authorization of the Ministry of Culture. Regulations of the Means of Communications Law of 1979, arts. 6 and 7.

national orientation as required in Honduras.[53] Still other countries mandate that there be a certain percentage of local capital participation in the communications sector. Thus, Costa Rica requires at least 65 percent local capital participation[54] while Guatemala requires at least 70 percent.[55]

Seven countries impose conditions on activities in the transportation sector. Barbados, Jamaica, Nicaragua, and Costa Rica reserve this area for the state, although Nicaragua grants licenses to private companies, with a preference for partnerships rather than corporations.[56] Costa Rica, in also granting licenses, gives preference to national investors whether they be individuals or legal entities.[57] The Dominican Republic, on the other hand, simply reserves domestic transportation for nationals only.[58] Finally, with respect to Guatemala and Honduras, local capital participation requirements have been established that, in Guatemala, call for 60 percent local capital participation[59] and 51 percent in Honduras.[60] However, it must be noted that in Honduras this percentage requirement is not strictly applied and, instead, is interpreted as granting preference to those companies with local capital rather than excluding those that do not meet the percentage requirement.

V. Taxation

While this article does not attempt to present a detailed analysis of the tax situation of foreign investment in the Caribbean or Central America, it is useful to have a general understanding of the system of taxation of income, dividends, interest, and royalties in the respective countries. As Table 2 illustrates, whether a foreign-owned company is incorporated in the country or serves as a branch operation of a company incorporated abroad, the rate of tax remains the same. It is only in El Salvador and Nicaragua that a reduced tax is paid if the foreign-owned company is incorporated in the host country. Countries with the highest corporate income tax include Costa Rica, Panama, and Trinidad and Tobago, while the country with the lowest is El Salvador, closely followed by Honduras. With respect to double taxation treaties, it is interesting to note that almost all of the Caribbean

53. This requirement is derived from the constitution (Political Constitution of 1982, art. 73). It is important to note that no restrictions are placed on the composition of the capital of the enterprises which provide these services.
54. Law 1758 of 1954, *as amended*, art. 3.
55. Radio Communications Law, arts. 9 and 25.
56. Decree 117 of 1979, arts. 2, 5, 8, and 9.
57. Law 3503 of 1965, arts. 1–4 and 6.
58. Law 861 of 1978, art. 23(c)(1).
59. Transportation Regulations (1945), arts. 2, 5, 10, and 13 and Decree 253 of 1946, arts. 4 and 11.
60. Decree 319 of 1976, arts. 3, 5, 18, 23, and 39.

countries have entered into tax agreements with the United States as well as with other countries, while none of the Central American countries have chosen to do so. Although it is difficult to state the precise reason for the lack of double taxation treaties in Central American countries, perhaps it has resulted from the relatively small amount of foreign investment in these countries and, therefore, a lack of interest on the part of both the host government and the foreign investor, as well as the fact that significant tax holidays have normally been available to foreign investors doing business in these countries.

VI. Incentives

A. Industrial

As members of the Caribbean Community (CARICOM),[61] and in an attempt to harmonize their industrial incentive laws, Barbados, Jamaica, and Trinidad and Tobago have all signed and incorporated into their national legislation[62] the 1973 CARICOM Agreement on the Harmonization of Fiscal Incentives to Industry. Under the agreement, two major benefits are granted to companies or their products which have been approved by the authorizing agency of the member country for the purpose of conferring a benefit under the agreement: exemption from income tax and relief from customs duties on imports of plant, equipment, machinery, spare parts, and raw materials. The agreement regulates the maximum concessions to be granted to certain classes of industry, such that no member country may grant benefits to an approved enterprise for a period or at percentage rates in excess of, or contrary to, those specified in the agreement.

Two categories of enterprises are eligible to receive the benefits established by the agreement. The first category is divided into three groups with the extent of the benefits granted to each group being determined by the amount of local value-added.[63] The second category is made up of highly

61. The Caribbean Community, formed in 1973 to promote the harmonious and equitable development of the member states through economic integration and the coordination of foreign policies, includes the countries of Guyana, Jamaica, Barbados, and Trinidad and Tobago, commonly referred to as the more developed countries (MDCs), with Barbados enjoying a slightly preferred position, as well as Antigua, Belize, Dominica, Grenada, Montserrat, St. Kitts-Nevis, St. Lucia, and St. Vincent, known as the less developed countries (LDCs).

62. Barbados has passed the Fiscal Incentives Act of 1974; Jamaica, the Industrial Incentives (Regional Harmonization) Act of 1974; and Trinidad and Tobago, the Fiscal Incentives Act of 1979. The scheme for the harmonization of fiscal incentives relates only to industry, defined as "a manufacturing or processing industry" including deep-sea fishing and shrimping when these form part of an integrated processing operation.

63. Local value-added means the amount (expressed as a percentage of total sales of the approved product) by which the amount realized from the sale of an approved product (in respect of a continuous period of twelve months) exceeds the aggregate amount of the following:

Table 2
Taxation of Corporate Income, Dividends and Other Remittances*

	BARBADOS†	COSTA RICA	DOMINICAN REPUBLIC	EL SALVADOR	GUATEMALA
Tax on companies incorporated in the country	20% life insurance companies 45% other companies	Progressive rate 15–50%	Progressive rate 10–46%[a]	Progressive rate 2.5–30%	Progressive rate 5–42%
Tax on branch operations of foreign companies	same	same	same	38%	same
Tax on dividends	10%	15%	20%	22%	12.5%
Tax on interest	40%	30%	20%	22%	10%
Tax on royalties	20%	20% patents, trademarks, and know-how 30% management and technical services	20%	22%	25% patents, trademarks, and know-how 20% commissions
Double taxation treaties	Canada, Denmark, Norway, Sweden, Switzerland and the United Kingdom	none	United States	none	none
Source of law	Income Tax Act, 1968–51, *as amended*	Law 837 of 1946, *as amended*	Dominican Income Tax Law 5911 of 1962, *as amended* by Law 72 of 1983	Decree 472 of 1963, *as amended*	Decree 229 of 1964, *as amended by* Decree 73 of 1983

*The rates which are applicable to investors from treaty countries are generally lower than those appearing in the table.

†Under the International Business Companies (Exemption from Income Tax) Act of 1965, corporations resident in Barbados but deriving income from outside are taxed at decreasing rates of 2 percent to ½ percent. Similar tax treatment is provided to companies which are established in accordance with the Offshore Banking Act of 1979.

‡Foreign source income is not subject to income tax in Panama. Under the "territorial" scope of Panama, a Panamanian corporation with an office in Panama and a license to engage in business does not pay Panamanian income tax if the transactions out of which the income arose took effect or were performed outside Panama.

[a]In addition, a 2% surtax on taxable income must be paid and a 3% surtax is levied on the amount of tax payable.

HONDURAS	JAMAICA	NICARAGUA	PANAMA‡	TRINIDAD AND TOBAGO
Progressive rate 3–40%	35% agricultural companies 45% non-agricultural companies[b]	35% agricultural companies 37.5% agro-industries 45% marketing companies 40% other companies	Progressive rate 20–50%[c] Complementary tax[d]	15% life insurance companies 50% other companies
same	same	40%	same	same
15%	37.5%	20%[e]	10%	25%
5%	12.5%	10% interest paid to financial institutions 40% other cases	Progressive rate 20–50%	30%
10%	12.5% patents, trademarks and know-how 25% management and technical services	40%	Progressive Rate 20–50% applied over 50% of the payment[f]	30%
none	Canada, Denmark, Germany, Norway, Sweden, the United Kingdom and the United States	none	none	Canada, Denmark, Germany, Italy, Norway, Switzerland, the United Kingdom and the United States
Decree 25 of 1964, *as amended*	Income Tax Act, Law 59 of 1954, *as amended*	Decree 662 of 1974, *as amended*	Fiscal Code of 1956, *as amended*	The Finance Act of 1966, *as amended*

[b]In addition, there is a 15% Additional Company Profits Tax.
[c]Companies established in the Free Trade Zone of the Canal are taxed at a reduced rate of 2.5–8.5% on profits arising from their exports.
[d]A complementary tax of 10% is applied if the company does not distribute its profits or if it distributes less than 40% of the net profits after tax.
[e]The 20% rate is applied if the paying company is a branch or subsidiary of a foreign company. If this is not the case, a progressive rate of 20–50% will be applied.
[f]Royalties paid by companies established in the Free Trade Zone of the Canal are exempt from tax.

Table 3
Periods of Benefits under the Agreement

Classification of an Approved Enterprise	*Maximum Number of Years' Relief from Income Tax and Customs Duties in Respect of an Approved Enterprise Located in:*		
	More Developed Countries (other than Barbados)	Barbados	Less Developed Countries
Group I Enterprises	9	10	15
Group II Enterprises	7	8	12
Group III Enterprises	5	6	10
Highly Capital-Intensive and Enclave Enterprises	10	10	15

capital intensive and enclave enterprises. As Table 3 illustrates, for Group I enterprises, which include those whose local value-added in the approved product is 50 percent or more of the value of the sale of the product, the tax holiday period is nine years in Jamaica and Trinidad and Tobago and ten years in Barbados.[64] Group II enterprises, or those with 25 to 50 percent local value-added, enjoy a seven-year tax holiday in Jamaica and Trinidad and Tobago and an eight-year tax holiday in Barbados. For those enterprises with 10 to 25 percent local value-added in the approved product (Group III enterprises), the length of tax holiday is five years for Jamaica and Trinidad and Tobago and six years for Barbados. Highly capital-intensive and enclave enterprises, that is, those with a capital investment of not less than $50 million in Jamaica and Trinidad and Tobago and $25 million in Barbados, or whose product is exclusively for export to contractors outside the CARICOM region, are eligible for ten-year tax holidays in all the countries without reference to the local value-added because of their

i. the value of imported raw materials, components and parts of components, fuels and services;
ii. wages and salaries paid during the period to persons who are not nationals of the member states;
iii. profits distributed and remitted directly or indirectly to persons (including companies) who are not resident in any member state;
iv. interest, management charges and other income payments accruing directly or indirectly to persons (including companies) not resident in any member state, other than a branch or agency of banks not resident in any member state;
v. depreciation of imports of plant, machinery, and equipment.

64. As MDCs, Jamaica and Trinidad and Tobago have a shorter tax holiday period than Barbados which, in turn, enjoys such a benefit for a shorter period of time than a LDC.

contribution to employment. These industries may continue to import their raw material inputs duty-free even after the tax holiday has ended.

An enterprise wishing to enjoy the above-mentioned benefits must: (1) be incorporated in the country from which it seeks the benefit; (2) be engaged in industry; (3) obtain approved status for itself and for its product; and (4) not be in an established industry of which 60 percent of the local market[65] is already supplied by a domestic producer—a condition not applying to export enclave or highly capital-intensive industries. Applications for the benefits granted under the respective incentive laws are made to the Ministry of Industry and Commerce in Jamaica and Trinidad and Tobago and to the Ministry of Trade, Tourism and Industry, as well as the Industrial Development Corporation in Barbados.

The Dominican Republic has enacted legislation similar to that found in the Caribbean countries regarding industrial incentives for qualifying national or foreign companies.[66] Under the Industrial Incentive and Protection Law,[67] Class A or free zone operations (i.e., enterprises at least 80 percent of whose product is exported) enjoy 100 percent income tax and import duty exoneration; Class B enterprises, or import substitution industries, enjoy a 50 percent income tax exemption and a 95 percent exoneration from import duties; and Class C enterprises, which include those companies producing for the domestic market, enjoy a 50 percent income tax exemption and a 90 percent exoneration from import duties. The length of the exemptions for each of the three classes of enterprises depends on their location in the country and varies between eight and twenty years.[68] Applications for classification under this law are made to the Industrial-Technical Department of the Secretariat of State for Industry and Commerce.

In 1960, five of the Central American countries (Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica) joined together to form the Central American Common Market—an economic integration scheme promoting trade liberalization and other instruments of linkage. Within this framework, the Central American Agreement on Fiscal Incentives for Industrial Development was approved by the member countries and entered into force

---

65. In Barbados there is a more lenient requirement of 90 percent.

66. Prior to the modification of the foreign investment law by Law 138 of 1983, Article 39 of Law 861 of 1978 provided that foreign enterprises were not entitled to the tax exemption benefits provided for in Article 13 of the Industrial Incentive and Protection Law. The benefits were originally designed to only apply to the capital held by national investors in foreign enterprises. Article 39 of the foreign investment law was amended so that foreign investors could also benefit from the Industrial Incentive and Protection Law.

67. Law 299 of 1968 as amended by Law 145 of 1983. The following economic activities are governed by special legislation and, thus, are excluded from the benefits of this law: sugar production, extraction of oil and natural gas, certain fishing activities, mineral extraction, certain hotel and tourism activities, construction and transportation industries, packaging, and handicraft activities.

68. Law 299 of 1968, art. 17.

in 1969. The agreement establishes a regional development regime for industry, excluding primary activities and services, by granting incentives—mainly exemption from income tax and relief from customs duties—to national or foreign companies that transform primary materials and semi-processed goods and that use Central American inputs. As shown in Table 4, the length of time that the benefits are available depends upon a company's classification into one of three distinct groups as well as whether it is a new or existing company, with longer-term benefits being granted to the former.[69] Group A companies include those that produce capital goods or industrial raw materials as well as those producing intermediate goods or consumer products with at least 50 percent Central American inputs. Group B companies include those that produce consumer, semiprocessed, or packaged goods, contribute to the countries' balance of payments (the relationship between the benefit and the annual expense of foreign exchange should be greater than 50 percent), and have a local value-added of more than 35 percent in relation to the value of production at ex-factory prices. Group C companies include those that simply assemble, pack, or mix products, as well as those whose activities are considered to be of little social importance, such as the production of beverages, tobacco, cosmetics, and perfume.

The administration of the Central American regional industrial incentive regime at the national level is the responsibility of the Ministry of Economics and the Ministry of Finance in Guatemala; the Ministry of Economics in El Salvador and Honduras; the Ministry of Industry and the Ministry of Finance in Nicaragua; and the Ministry of Industry, Energy and Mining in Costa Rica.

Although Panama is not a member of the Central American Common Market and, therefore, does not adhere to the Agreement on Fiscal Incentives for Industrial Development, it does have several incentive regimes of its own that are available to both national and foreign investors. Some of these regimes are applicable to all classes of activities while others are designed for certain sectors only.[70] With regard to incentives in the industrial sector, both national and foreign companies may enjoy exemption from income tax, the duty-free importation of goods, and tariff protection through the imposition of import quotas.[71] For those companies which produce for the export market, rather than the domestic market, additional benefits are available, such as exemption from sales tax and relief from

69. New enterprises are those that produce goods that are not currently produced in the country and that introduce new methods of manufacturing through the use of technical processes that increase production, reduce costs, and satisfy demand.

70. Tourism; Decree 26 of 1967, Decree 77 of 1971 and Decree 102 of 1972; Agriculture, Law 19 of 1982; and Construction, Law 6 of 1983.

71. Decree 413 of 1970, arts. 5, 7, 9, 12, and 14.

Table 4

Benefits under the Central American Agreement on Fiscal Incentives to Industrial Development*

		Group A	Group B	Group C
1. *Exemption from customs duties on machinery and equipment*	a. New	10 years 100%	8 years 100%	3 years 100% whether new or existing
	b. Existing	6 years 100%	5 years 100%	
2. *Exemption from customs duties on raw materials and semi-processed goods and packages*	a. New	1–5 years 80%	1–3 years 80%	—
		6–10 years 50%	4 and 5 years 50%	—
	b. Existing	—	—	—
3. *Exemption from customs duties on fuels, except gasoline*	a. New	1–5 years 100%	1–3 years 100%	—
		—	4 and 5 years 50%	—
	b. Existing	—	—	—
4. *Relief from income tax*†	a. New	1–8 years 100%	1–6 years 100%	—
	b. Existing	1–2 years 100%	—	—
5. *Relief from tax on net worth*†	a. New	1–10 years 100%	1–6 years 100%	—
	b. Existing	1–4 years 100%	—	—

*The benefit period is longer for investments in Honduras because it is considered a relatively less developed country requiring preferential treatment.

†These incentives are optional for the countries because of a Protocol to the Agreement which was signed in 1973. Although Guatemala, El Salvador, and Nicaragua no longer grant such benefits, Honduras does so for certain projects and Costa Rica conditions such benefits on the location of the factory.

export duties. To receive these benefits, an investor must sign a contract with the Ministry of Trade and Industry specifying the benefits granted and the rights and obligations of the investor.

In addition to the Caribbean and Central American regional regimes of industrial incentives, each of the member countries of both groups also grants national incentives to investors. In general, these include the free importation of goods, reduced taxes on profits, exemption from local taxes and, in some cases, the granting of preferential financing. These national benefits can be enjoyed by companies that are established in accordance with an industrial decentralization policy (Guatemala),[72] or that are located in free trade zones or industrial parks (Guatemala, Honduras, Costa Rica, Jamaica, Barbados, and Trinidad and Tobago);[73] as well as by those which operate in specific sectors, such as forestry (Guatemala);[74] mining (Costa Rica and Jamaica);[75] agricultural development (El Salvador and Honduras);[76] and banking (Barbados and Panama).[77]

VI. Access to Domestic Credit

In Central America, foreign investors are granted the same access to domestic credit as nationals. Nevertheless, in El Salvador, financial institutions grant priority to those small businesses that are reserved for national investors,[78] and in Costa Rica state banks grant preferential credit treatment to companies with a majority of national capital.[79] Costa Rica also limits to 10 percent of the total investment the amount of domestic credit that is available to both a foreign mining company and a national mining company with less than 51 percent national participation.[80] Finally, under the Industrial Parks Law of Costa Rica, the preferential credit treatment that is available to companies located in industrial parks is reserved for those companies that have at least 51 percent national capital.[81]

72. Decree 24 of 1979 grants various benefits according to the location of the company in one of five different zones.

73. In Guatemala, the Industrial Free Trade Zone of Santo Tomás de Castilla (Decrees 22 of 1973 and 15 of 1979); in Honduras, Puerto Cortés Free Trade Zone (Decree 356 of 1976); in Costa Rica, Law 6695 of 1981 (free trade zones and industrial parks); in Jamaica, Kingston Free Trade Zone Act, Act 3 of 1980; in Barbados, Industrial Development Corporation Act; and in Trinidad and Tobago, Industrial Development Corporation Act (Act 11 of 1958, as amended).

74. Decree 58 of 1974.

75. In Costa Rica, Law 6797 of 1982 and in Jamaica, the Bauxite and Alumina Industries (Encouragement) Act, Act 37 of 1967.

76. El Salvador's Decree 522 of 1961 provides incentives only for cooperatives; Honduras, Decree 69 of 1970.

77. In Barbados, the Offshore Banking Act of 1979, *as amended*, and in Panama, Decree 238 of 1970.

78. Decree 279 of 1969, art. 16.

79. Law 1644 of 1953, art. 62, *as amended by* Law 4646 of 1970.

80. Law 6797 of 1982, art. 66.

81. Law 6695 of 1981, art. 26.

Unlike the open access to domestic credit which is found in Central America, domestic credit in the Caribbean is normally not available on an unrestricted basis to foreign investors. Since most of these countries already face severe foreign exchange shortages and, in fact, look to foreign investors for the supply of much needed capital as well as technological know-how, percentage, time or sector limitations are often placed on a foreign investor's access to domestic credit. Both Trinidad and Tobago and Jamaica limit the amount of local financing which is available to foreign investors by imposing percentage limits of 20 and 25 percent, respectively, of the total paid-up capital and retained earnings of the borrowing foreign company. These limits are subject to review and borrowing in excess of these amounts can be authorized if the company generates substantial employment or is a net earner or saver of foreign exchange. The borrowing limits can also be made lower in Jamaica if the company's contribution to employment and exports is minimal, as in the case of foreign distributive and service type enterprises where a more restrictive ratio of 10 percent is applied. The availability of local credit to companies operating in the Dominican Republic is limited to one year rather than a percentage of the paid-up capital and retained earnings.[82] To obtain credit in excess of one year, the foreign investor must seek authorization from the Monetary Board. Barbados has yet another means of curtailing the local financing of foreign operations. In this country, domestic credit is not normally available to foreign investors for infrastructure purposes since investors are expected to provide such capital at the outset. However, the central bank may allow a foreign company to borrow a minimum amount if the company is deemed to be of considerable importance to the country's economy. Domestic credit is, however, generally available to foreign investors for working capital purposes on a one-to-one basis once the company has been established. If the foreign company establishes a favorable record of reinvesting its profits or investing them in other sectors of the national economy, the one-to-one ratio is eliminated.

VII. Transfer of Technology

Of the ten countries discussed, only one, the Dominican Republic, specifically regulates contracts for the importation of technology.[83] Technology contracts in the Dominican Republic are subject to the approval of the Directorate of Foreign Investment and, once approved, are required to be

82. Law 861 of 1978, art. 28.

83. Law 861 of 1978, arts. 29–38 and Internal Regulations of the Directorate of Foreign Investment, chap. VII. A law governing technology contracts was proposed in Costa Rica in 1983, but the Legislative Assembly has yet to take action. DIARIO OFICIAL, LA GACETA, June 21, 1983.

registered with the central bank. In making its decision, the Directorate takes into consideration the contribution to the country of the technology transferred as well as its cost. Contracts which contain clauses restricting the freedom of action of the licensee, such as those prohibiting the licensee from exporting the goods produced with the technology or those requiring that the goods be sold exclusively to the grantor, will not be approved by the Directorate. Further, all contracts concerning the transfer of technology may not contain clauses which remove possible conflicts or controversies from national jurisdiction and competency, or which permit the subrogation by a state of the rights and properties of its national investors.

While technology contracts in the remaining countries are not subject to the prior approval of national authorities, as in the Dominican Republic, some countries, such as Barbados, El Salvador, Guatemala, Jamaica, Nicaragua, and Trinidad and Tobago, do require that such contracts be registered with the central bank of the country so that royalties and similar payments may be remitted abroad. Other countries, Honduras and Costa Rica, for example, do not require the registration of such contracts with the central bank, but they do require that documents evidencing the obligation to pay royalties be presented at the time foreign exchange is sought for such payments. Panama, on the other hand, with its free exchange regime, does not require the presentation of documents to realize royalty payments. It must be pointed out that in the case of Costa Rica, restrictions have recently been imposed on the importation of technology by the public sector in the sense that contracting government agencies are now responsible for specifying the cost of the various components of the technological package while the foreign supplier of technology must guarantee the results to be obtained from the use of the know-how.[84]

VIII. Investment Guarantees and Conflict Resolution

All of the Central American and Caribbean countries have signed agreements with the United States guaranteeing U.S. investments in accordance with the insurance system of the Overseas Private Investment Corporation (OPIC). While this agency provides insurance coverage against inconvertibility of foreign exchange, loss due to expropriation, and damage caused by war or insurrection, such coverage is sometimes limited to certain countries or for certain periods of time. Thus, for example, OPIC only insures investments located in Guatemala and El Salvador against risks due to inconvertibility of foreign exchange or loss due to expropriation, while insurance against foreign exchange inconvertibility is currently not available for investments in Jamaica or the Dominican Republic due to the countries'

84. Executive Decrees 14475-H and 14694-PLAN of May and July of 1983.

failure to maintain full convertibility of their currency. It must also be pointed out that while some degree of OPIC insurance may be available in a particular country, the national legislation implementing the OPIC agreement may be so restrictive that the country attracts only a small number of guaranteed investments, as in the case of Guatemala.[85]

With respect to conflict resolution, all of the countries studied utilize provisions for the settlement of investment disputes which originate in national sectoral legislation or specific contracts and licensing agreements which are concluded with foreign investors. However, only some countries also utilize additional channels which are available at the international level, such as the International Centre for the Settlement of Investment Disputes sponsored by the World Bank. Barbados, Jamaica, Trinidad and Tobago, El Salvador, and Costa Rica[86] have signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. As signatories to the convention, the countries benefit from the centre's arbitral tribunals and conciliation commission which have been established for the resolution of investment disputes between private foreign investors and host governments.

IX. Conclusions

Based on the foregoing description and comparison of the legal framework for foreign investment in the Caribbean and Central America, it is quite clear that although the respective regulatory regimes impose certain restrictions on foreign investors' activities, they also offer a variety of incentives. Further, the type of restrictions that are often imposed (be they percentage limits on foreign participation in some sectors or those dealing with requirements and delays in the transfer of funds abroad), resemble those applied in other developing countries and, in fact, are often less rigid than those included in the legislation of many South American countries. The very real interest that a host country has in preserving its independence and national sovereignty leads to a balancing of the important role which foreign capital and technology can play in the development of a country's economy with the need to maintain national ownership and control of key sectors. Whether a foreign investor agrees with the limitations placed on his actions for purposes of maintaining this balance is irrelevant: what is relevant is that the foreign investor be aware of such limitations and learn to

85. Guatemala's implementation of the OPIC regulations of 1969 restrict the possibility of guaranteeing investments which take the form of companies with assembly operations, or those which buy already established national companies. Also, the regulations require that the investment benefit the national economy by generating a positive balance of payments, increase the national value-added, contribute to employment and promote the establishment of joint ventures.

86. Costa Rica has not yet ratified the convention.

conduct his business in accordance with them. For this reason, it is most important that the investor work with the host government in designing and negotiating foreign investment projects, as well as obtain local counsel to provide information regarding local laws and regulations as well as an insight into the administrative practice of the various intervening government agencies.

The preceding collection of Caribbean and Central American foreign investment laws and regulations indicates that all the countries possess a structured and fairly rational legal system. It is a system that is closely related to the legal system of Europe—be it of Anglo-Saxon or Continental Europe—and one that offers foreign investors legal institutions and procedures that are similar to those operating in their own countries.

The Caribbean and Central American countries, while undergoing substantial change and striving to solve major political, economic, and social problems, remain countries that offer vast business potential and that therefore deserve the serious consideration of foreign investors.